



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 23, 1989

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 89- 130

Duane F. Johnson
State Librarian
Kansas State Library
Capitol Building
Topeka, Kansas 66612-1593

Re: Taxation--Aggregate Tax Levy Limitations--Public
Libraries

Synopsis: The board of directors of a public library district established pursuant to K.S.A. 12-1236 et seq., as the governing body of the library district, may elect to exempt the library district from the provisions of K.S.A. 1988 Supp. 79-5021 to 79-5033, inclusive (the aggregate tax levy limit law) pursuant to K.S.A. 1988 Supp. 79-5036(c). The provisions of K.S.A. 19-101b which apply to a five or seven member board of county commissioners also apply to a seven member board of directors of a library district. Upon successfully exempting out of K.S.A. 1988 Supp. 79-5021 to 79-5033, inclusive, the library district will once again be subject to the levy limitations in existence prior to the reappraisal year. Cited herein: K.S.A. 12-1237; 12-1238; K.S.A. 1988 Supp. 12-1247; K.S.A. 19-101b; K.S.A. 1988 Supp. 79-5022; 79-5036.

* * *

Dear Mr. Johnson:

On behalf of several public library districts, you request our opinion regarding a library district's use of K.S.A. 1988

Supp. 79-5036(c) to exempt the library district from the provisions of K.S.A. 1988 Supp. 79-5021 to 79-5033, inclusive (the aggregate tax levy limit law). Your specific questions are:

- "1. May the library board elect to exempt the district from these provisions, or must the governing body of the municipality take this action on behalf of the library board?
- "2. If, on the basis of a library board's previously defined budget authority (A.G.O. 82-193), and on the basis of the identification of a library district as a municipality (A.G. Letter, April 20, 1966), the library board does have the authority under K.S.A. 1988 Supp. 79-5036(c) to take this action, must the vote of the board be unanimous in favor, two-thirds in favor, or a majority in favor?
- "3. What levy limitation, if any, prevails for the library levy following completion of an action to exempt?"

K.S.A. 1988 Supp. 79-5036 provides as follows:

"(a) The governing body of any city, in the year next following the year in which the valuations established under the program of statewide reappraisal are used as a basis for the levy of taxes or in any year thereafter, may elect, in the manner prescribed by and subject to the limitations of section 5 of article 12 of the Kansas Constitution, to exempt such city from the provisions of K.S.A. 1985 Supp. 79-5021 to 79-5033, inclusive.

"(b) The governing body of any county, in the year next following the year in which the valuations established under the program of statewide reappraisal are used as a basis for the levy of taxes or in any year thereafter, may elect, in the manner prescribed by and subject to the limitations of K.S.A. 19-101b, and amendments thereto, to exempt such county from the provisions of K.S.A. 1985 Supp. 79-5021 to 79-5033, inclusive.

"(c) The governing body of any other taxing subdivision subject to the provisions of K.S.A. 1985 Supp. 79-5021 to 79-5033, inclusive, in the year next following the year in which the valuations established under the program of statewide reappraisal are used as a basis for the levy of taxes or in any year thereafter, may elect, in the manner prescribed by and subject to the limitations of K.S.A. 19-101b, and amendments thereto, insofar as such section may be made applicable, to exempt such subdivision from the provisions of K.S.A. 1985 Supp. 79-5021 to 79-5033, inclusive."

Subsections (a) and (b) of this statute clearly apply to cities and counties respectively. Subsection (c) applies to "any other taxing subdivision subject to the provisions of K.S.A. [1988] Supp. 79-5021 to 79-5033, inclusive." In Attorney General Opinion No. 87-167 this office concluded that "a public library which can mandatorily require a city, county or township to levy a tax for mandatory purposes is a taxing district and thus a taxing subdivision" subject to the provisions of K.S.A. 1988 Supp. 79-5021 to 79-5033, inclusive. Pursuant to K.S.A. 12-1237 and K.S.A. 1988 Supp. 12-1247, the directors of the library district, as the district's governing body, can levy a tax for the maintenance of the library and, upon certifying the tax, require the county to collect the tax. See also Attorney General Opinions No. 74-271; 82-193. Thus, in our opinion, a public library district established pursuant to K.S.A. 12-1236 et seq. is a taxing subdivision subject to K.S.A. 1988 Supp. 79-5021 to 79-5033, inclusive, and is authorized to exempt itself from those provisions pursuant to K.S.A. 1988 Supp. 79-5036(c). Further, this subsection places such authority in the governing body of the library district, as a separate taxing subdivision, and does not require cooperation or participation by the governing body of any other taxing subdivision. Thus, we believe the library district's governing body has the authority to act under K.S.A. 1988 Supp. 79-5036 on its own, except as the procedures set forth in K.S.A. 19-101b otherwise require.

You next ask whether, if a public library district can act on its own, the vote of the directors must be unanimous, two-thirds or a majority in favor to pass the resolution. K.S.A. 1988 Supp. 79-5036(c) provides that the governing body

of a taxing subdivision other than a city or county proceed "in the manner prescribed by and subject to the limitations of K.S.A. 19-101b, and amendments thereto, insofar as such section may be made applicable." K.S.A. 19-101b provides in part:

"(b) A charter resolution is a resolution which exempts a county from the whole or any part of an act of the legislature and which may provide substitute and additional provisions on the same subject. Such charter resolution shall be so titled, shall designate specifically the act of the legislature or part thereof made inapplicable to such county by the passage of the resolution and shall contain any substitute and additional provisions. Such charter resolution shall require the unanimous vote of all board members unless the board determines prior to passage it is to be submitted to a referendum in the manner hereinafter provided, in which event such resolution shall require a 2/3 vote of the board. In counties with five or seven county commissioners, such charter resolution shall require a 2/3 vote of all board members unless the board determines prior to passage it is to be submitted to a referendum in the manner hereinafter provided, in which event such resolution shall require a majority vote of the board. Every charter resolution shall be published once each week for two consecutive weeks in the official county newspaper. A charter resolution shall take effect 60 days after final publication unless it is submitted to a referendum in which event it shall take effect when approved by a majority of the electors voting thereon.

"(c) If within 60 days of the final publication of a charter resolution, a petition signed by a number of electors of a county equal to not less than 2% of the number of electors who voted at the last preceding November general election or 100

electors, whichever is the greater, shall be filed in the office of the county election officer demanding that such resolution be submitted to a vote of the electors, it shall not take effect until submitted to a referendum and approved by the electors. An election if called, shall be called within 30 days and held within 90 days after the filing of the petition. The board, by resolution, shall call the election and fix the date. Such resolution shall be published once each week for three consecutive weeks in the official county newspaper, and the election shall be conducted in the same manner as are elections for officers of such county. The proposition shall be: 'Shall charter resolution No. _____, entitled (title of resolution) take effect?' The board may submit any charter resolution to a referendum without petition in the same manner as charter resolutions are submitted upon petition, except elections shall be called within 30 days and held within 90 days after the first publication of the charter resolution. Each charter resolution which becomes effective shall be recorded by the county election officer in a book maintained for that purpose with a statement of the manner of adoption, and a certified copy shall be filed with the secretary of state, who shall keep an index of the same."

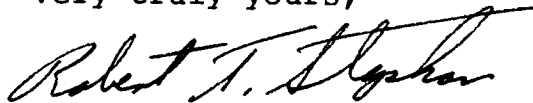
Pursuant to K.S.A. 12-1238 the board of directors of a library district is to be composed of seven members. We therefore believe that the provision of K.S.A. 19-101b applying to counties with five or seven commissioners would apply, requiring a two-thirds vote of all directors "unless the board [of directors] determines prior to passage it is to be submitted to a referendum . . . in which event such resolution shall require a majority vote of the board."

Finally, you inquire what levy limitation, if any, prevails for the library district's levy following completion of an action to exempt. A successful action to exempt pursuant to K.S.A. 1988 Supp. 79-5036 exempts the taxing subdivision from

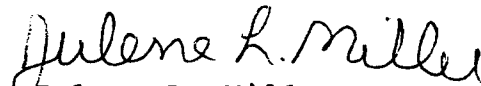
the provisions of K.S.A. 1988 Supp. 79-5021 to 79-5033, inclusive. K.S.A. 1988 Supp. 79-5022 is the statute which suspends all existing statutory fund mill levy rates and aggregate levy limitations on taxing subdivisions. Once the taxing subdivision exempts itself from K.S.A. 1988 Supp. 79-5022, the suspension is lifted and the limits in existence prior to the year of reappraisal are back in force.

In conclusion, the board of directors of a public library district established pursuant to K.S.A. 12-1236 et seq., as the governing body of the library district, may elect to exempt the library district from the provisions of K.S.A. 1988 Supp. 79-5021 to 79-5033, inclusive (the aggregate tax levy limit law) pursuant to K.S.A. 1988 Supp. 79-5036(c). The provisions of K.S.A. 19-101b which apply to a five or seven member board of county commissioners also apply to a seven member board of directors of a library district. Upon successfully exempting out of K.S.A. 1988 Supp. 79-5021 to 79-5033, inclusive, the library district will once again be subject to the levy limitations in existence prior to the reappraisal year.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm